

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

FRED SHANGIN, DENISE
BERESKIN, MICHAEL ENRIGHT,
and CECIL KALMAKOFF,

Plaintiffs,

v.

Case No. 3:19-cv-00299-SLG-DMS

DALE L. CARLSON, *in personam*;
and the F/V TAJAHA, USCG ID
Number 644238, HER ENGINES,
MACHINERY, APPURTENANCES
AND CARGO, *in rem*,

Defendants.

**ORDER OF DISMISSAL WITHOUT PREJUDICE WITH RETAINED
JURISDICTION**

Before the Court at Docket 14 is Plaintiffs' Motion to Dismiss Without Prejudice. The plaintiffs informed the Court that a settlement has been reached between the parties and the precise payment terms have been reduced to writing and agreed to (Dkt. 14). Although they seek dismissal, the plaintiffs asked the Court to retain jurisdiction over this matter until the final installment of the settlement is paid in mid-August 2020, at which time the Plaintiffs state they will promptly notify the Court of the status of settlement (Dkt. 14).

No opposition to the motion was filed. The motion was referred to the Honorable Magistrate Judge Deborah M. Smith. At Docket 16, Judge Smith issued

her Report and Recommendation, in which she recommended that the motion be granted in accordance with the terms of the proposed order at Docket 14-1. No objections to the Report and Recommendation were filed.

The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1). That statute provides that a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.”¹ A court is to “make a de novo determination of those portions of the magistrate judge’s report or specified proposed findings or recommendations to which objection is made.”² But as to those topics on which no objections are filed, “[n]either the Constitution nor [28U.S.C. § 636(b)(1)] requires a district judge to review, de novo, findings and recommendations that the parties themselves accept as correct.”³

The magistrate judge recommended that the Court grant the Motion to Dismiss Without Prejudice. The Court has reviewed the Report and Recommendation and agrees with its analysis. Accordingly, the Court adopts the Report and Recommendation, and IT IS ORDERED that the Motion to Dismiss Without Prejudice is GRANTED. The Court retains jurisdiction over this matter until Plaintiffs inform the Court that the settlement is finalized and seek a dismissal

¹ 28 U.S.C. § 636(b)(1).

² *Id.*

³ *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); *see also Thomas v. Arn*, 474 U.S. 140, 150 (1985) (“It does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.”).

with prejudice of all claims against the defendants. Plaintiffs shall promptly, but no later than August 31, 2020, notify the Court of the status of settlement by either moving to dismiss all claims stated or stateable in this action with prejudice, each party to bear their own costs and attorney's fees, or notifying the Court that plaintiffs will proceed with their suit by filing a Rule 60(b) motion to rescind this dismissal without prejudice in light of a perceived default by defendants.

In the event that the settlement fails and plaintiffs elect to proceed with their lawsuit, they will make a precise accounting of any credits to which defendants are entitled as a result of payments made under the settlement agreement.

In the event that plaintiffs go forward with their lawsuit, defendants, in addition to the credit they will receive against claims made against them for any payments made under the settlement agreement before default, will also be afforded all affirmative defenses and potential counter-claims, whether available at law or in admiralty.

DATED this 7th day of August, 2020 at Anchorage, Alaska.

/s/ Sharon L. Gleason
UNITED STATES DISTRICT JUDGE